

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-CR-00044-RJC

USA

v.

CIRO NOE GUERRERO-ROSALES (4)

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ORDER

UNDER SEAL

THIS MATTER is before the Court upon motion of the defendant for a reduction of sentence based on retroactive amendments to the United States Sentencing Guidelines regarding drug offenses, (Doc. No. 161), and the government's response in opposition, (Doc. No. 165).

The defendant pled guilty to conspiring to possess with intent to distribute at least 100 kilograms of marijuana (Count One) and using and carrying a firearm during and in relation to a crime of violence (Count Three). (Doc. No. 111: Judgment). At sentencing, the Court determined that the amount of marijuana reasonably foreseeable to the defendant was 253 kilograms. (Doc. No. 163: Supplemental Presentence Report at 1). The total offense level of 23, combined with a criminal history category of III, resulted in an advisory guideline range of 57-71 months on the drug offense. (*Id.*). The Court imposed a sentence of 24 months based on the government's motion, (Doc. No. 108), pursuant to 18 U.S.C. § 3553(e) and USSG §5K1.1 as to Count One, 40% of the low end of the range. (Doc. No. 111: Judgment at 2).

Under the most recent amendments to the guidelines, the total offense level for the defendant's drug offense is 21, USSG Supp. to Appx. C., Amend. 782 (2014), resulting in an amended guideline range of 46-57 months. (Doc. No. 163: Supplemental Presentence Report at 2). The defendant seeks a comparably reduced sentence pursuant to USSG §1B1.10(b)(2)(A),


(Doc. No. 161: Motion at 2), which the government opposes based on misconduct while in custody, (Doc. No. 165: Response at 1).

Consistent with 18 U.S.C. § 3582(c)(2), the Court has considered the factors set forth in 18 U.S.C. § 3553(a), as well as the defendant's post-sentence conduct and the public's safety. The defendant argues that his citation for fighting and assault is in the past and that he has completed his GED and vocational training courses. (Doc. No. 173: Reply at 3-4). Considering the circumstances of this case and the § 3553(a) factors, the Court finds that a reduction of the defendant's sentence would accomplish the goals of sentencing.

IT IS, THEREFORE, ORDERED that the defendant's motion, (Doc. No. 161), is **GRANTED** and the defendant's sentence on Count One is reduced to 18 months. The sentence on Count Three and all other conditions remain unchanged.

The Clerk is directed to certify copies of this Order to the defendant, counsel for the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: October 13, 2016


Robert J. Conrad, Jr.
United States District Judge



SEALED DOCUMENT with access to Specified Parties/Defendants.